

AMENDED IN ASSEMBLY SEPTEMBER 10, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1335

Introduced by Assembly Member Maienschein

February 22, 2013

~~An act to add Section 129853 to the Health and Safety Code, relating to health facilities, and making an appropriation therefor. An act to amend Sections 264, 264.1, 286, 288a, 288.5, 289, 667.61, and 2933.1 of the Penal Code, relating to sex offenses.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Maienschein. ~~Office of Statewide Health Planning and Development: construction of health facilities. Sex offenses: disabled victims.~~

(1) Under existing law a person who commits rape, or an act of sodomy, oral copulation, or sexual penetration, against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, is punishable by imprisonment in the state prison for 3, 6, or 8 years, under existing law, in the case of sodomy, oral copulation, or sexual penetration, the crime is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, or by imprisonment in a county jail for a period of not more than one year, if both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered.

This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years. By increasing the punishment for these crimes, this bill would impose a state-mandated local program.

(2) Under existing law, a defendant who, voluntarily acting in concert with another person, by force or by violence and against the will of the victim, commits an act of rape, spousal rape, or sexual penetration, either personally or by aiding and abetting the other person, is guilty of a crime punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would make it a crime punishable by imprisonment in the state prison for 10, 12, or 14 years to commit an act of rape, spousal rape, or sexual penetration in concert with another person, either personally or by aiding and abetting the other person, against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By creating a new crime, this bill would impose a state-mandated local program.

(3) Under existing law, any person who resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with a child under the age of 14 years, is guilty of the offense of continuous sexual abuse of a child, punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.

This bill would make any person who resides in the same home with a disabled person or has recurring access to the disabled person, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with the disabled person, guilty of the crime of continuous sexual abuse of a disabled person, and would make the crime punishable by imprisonment in the state prison for a term of 6, 12, or 16 years. By creating a new crime, this bill would impose a state-mandated local program.

(4) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant

shall be punished by imprisonment in the state prison for 15 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. The bill would also add continuous sexual abuse of a disabled person to the above provisions. The bill would apply the above provisions to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(5) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if, among other things, in the commission of that offense any person, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. Under the bill, the above provisions would also apply to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(6) Existing law prohibits a person who is convicted of a violent felony offense from accruing more than 15% of worktime credit, as defined, against his or her prison sentence.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent to the above provisions.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the Office of Statewide Health Planning and Development to pass upon and approve or reject all plans for the construction or the alteration of any hospital building, as specified. Existing law requires the office to determine and establish an application filing fee that will cover the costs of administering these requirements, and requires the deposit of these fees into the Hospital Building Fund, which is continuously appropriated for the use of the office in carrying out these provisions.~~

~~This bill would require a person or entity requesting a copy of a plan maintained by the office to bear the cost of producing the copy of that plan. To the extent that this requirement would increase the costs of administering the above-described requirements and amounts of moneys from fees deposited into the Hospital Building Fund, this bill would make an appropriation.~~

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 264 of the Penal Code is amended to
2 read:

3 264. (a) Except as provided in subdivision (c), rape, as defined
4 in Section 261 or 262, is punishable by imprisonment in the state
5 prison for three, six, or eight years.

6 (b) In addition to any punishment imposed under this section
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates Section 261 or 262 with the

proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(c) (1) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a child who is under 14 years of age shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(2) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a minor who is 14 years of age or older shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) *Any person who commits rape in violation of paragraph (1) of subdivision (a) of Section 261 shall be punished by imprisonment in the state prison for 9, 11, or 13 years.*

~~(3)~~

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

SEC. 2. Section 264.1 of the Penal Code is amended to read:

264.1. (a) The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.

(b) (1) If the victim of an offense described in subdivision (a) is a child who is under 14 years of age, the defendant shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(2) If the victim of an offense described in subdivision (a) is a minor who is 14 years of age or older, the defendant shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(c) *In any case in which the defendant, voluntarily acting in concert with another person, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for 10, 12, or 14 years if the victim of the offense is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this was known or reasonably should have been known to the person committing the act.*

SEC. 3. *Section 286 of the Penal Code is amended to read:*

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

1 (C) Any person who commits an act of sodomy with another
2 person who is a minor 14 years of age or older when the act is
3 accomplished against the victim's will by means of force, violence,
4 duress, menace, or fear of immediate and unlawful bodily injury
5 on the victim or another person shall be punished by imprisonment
6 in the state prison for 7, 9, or 11 years.

7 (D) This paragraph does not preclude prosecution under Section
8 269, Section 288.7, or any other provision of law.

9 (3) Any person who commits an act of sodomy where the act
10 is accomplished against the victim's will by threatening to retaliate
11 in the future against the victim or any other person, and there is a
12 reasonable possibility that the perpetrator will execute the threat,
13 shall be punished by imprisonment in the state prison for three,
14 six, or eight years.

15 (d) (1) Any person who, while voluntarily acting in concert
16 with another person, either personally or aiding and abetting that
17 other person, commits an act of sodomy when the act is
18 accomplished against the victim's will by means of force or fear
19 of immediate and unlawful bodily injury on the victim or another
20 person or where the act is accomplished against the victim's will
21 by threatening to retaliate in the future against the victim or any
22 other person, and there is a reasonable possibility that the
23 perpetrator will execute the threat, shall be punished by
24 imprisonment in the state prison for five, seven, or nine years.

25 (2) Any person who, while voluntarily acting in concert with
26 another person, either personally or aiding and abetting that other
27 person, commits an act of sodomy upon a victim who is under 14
28 years of age, when the act is accomplished against the victim's
29 will by means of force or fear of immediate and unlawful bodily
30 injury on the victim or another person, shall be punished by
31 imprisonment in the state prison for 10, 12, or 14 years.

32 (3) Any person who, while voluntarily acting in concert with
33 another person, either personally or aiding and abetting that other
34 person, commits an act of sodomy upon a victim who is a minor
35 14 years of age or older, when the act is accomplished against the
36 victim's will by means of force or fear of immediate and unlawful
37 bodily injury on the victim or another person, shall be punished
38 by imprisonment in the state prison for 7, 9, or 11 years.

39 (4) This subdivision does not preclude prosecution under Section
40 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for ~~three, six, or eight~~ 9, 11, or 13 years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of

1 the mentally disordered or in any other public or private facility
 2 for the care and treatment of the mentally disordered approved by
 3 a county mental health director, shall be punished by imprisonment
 4 in the state prison, ~~or in a county jail for not more than one year~~
 5 *for 9, 11, or 13 years.* Notwithstanding the existence of a
 6 conservatorship pursuant to the Lanterman-Petris-Short Act (Part
 7 1 (commencing with Section 5000) of Division 5 of the Welfare
 8 and Institutions Code), the prosecuting attorney shall prove, as an
 9 element of the crime, that a mental disorder or developmental or
 10 physical disability rendered the alleged victim incapable of giving
 11 legal consent.

12 (i) Any person who commits an act of sodomy, where the victim
 13 is prevented from resisting by an intoxicating or anesthetic
 14 substance, or any controlled substance, and this condition was
 15 known, or reasonably should have been known by the accused,
 16 shall be punished by imprisonment in the state prison for three,
 17 six, or eight years.

18 (j) Any person who commits an act of sodomy, where the victim
 19 submits under the belief that the person committing the act is the
 20 victim's spouse, and this belief is induced by any artifice, pretense,
 21 or concealment practiced by the accused, with intent to induce the
 22 belief, shall be punished by imprisonment in the state prison for
 23 three, six, or eight years.

24 (k) Any person who commits an act of sodomy, where the act
 25 is accomplished against the victim's will by threatening to use the
 26 authority of a public official to incarcerate, arrest, or deport the
 27 victim or another, and the victim has a reasonable belief that the
 28 perpetrator is a public official, shall be punished by imprisonment
 29 in the state prison for three, six, or eight years.

30 As used in this subdivision, "public official" means a person
 31 employed by a governmental agency who has the authority, as part
 32 of that position, to incarcerate, arrest, or deport another. The
 33 perpetrator does not actually have to be a public official.

34 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
 35 means a threat to kidnap or falsely imprison, or inflict extreme
 36 pain, serious bodily injury, or death.

37 (m) In addition to any punishment imposed under this section,
 38 the judge may assess a fine not to exceed seventy dollars (\$70)
 39 against any person who violates this section, with the proceeds of
 40 this fine to be used in accordance with Section 1463.23. The court,

1 however, shall take into consideration the defendant's ability to
2 pay, and no defendant shall be denied probation because of his or
3 her inability to pay the fine permitted under this subdivision.

4 *SEC. 4. Section 288a of the Penal Code is amended to read:*

5 288a. (a) Oral copulation is the act of copulating the mouth
6 of one person with the sexual organ or anus of another person.

7 (b) (1) Except as provided in Section 288, any person who
8 participates in an act of oral copulation with another person who
9 is under 18 years of age shall be punished by imprisonment in the
10 state prison, or in a county jail for a period of not more than one
11 year.

12 (2) Except as provided in Section 288, any person over the age
13 of 21 years who participates in an act of oral copulation with
14 another person who is under 16 years of age is guilty of a felony.

15 (c) (1) Any person who participates in an act of oral copulation
16 with another person who is under 14 years of age and more than
17 10 years younger than he or she shall be punished by imprisonment
18 in the state prison for three, six, or eight years.

19 (2) (A) Any person who commits an act of oral copulation when
20 the act is accomplished against the victim's will by means of force,
21 violence, duress, menace, or fear of immediate and unlawful bodily
22 injury on the victim or another person shall be punished by
23 imprisonment in the state prison for three, six, or eight years.

24 (B) Any person who commits an act of oral copulation upon a
25 person who is under 14 years of age, when the act is accomplished
26 against the victim's will by means of force, violence, duress,
27 menace, or fear of immediate and unlawful bodily injury on the
28 victim or another person, shall be punished by imprisonment in
29 the state prison for 8, 10, or 12 years.

30 (C) Any person who commits an act of oral copulation upon a
31 minor who is 14 years of age or older, when the act is accomplished
32 against the victim's will by means of force, violence, duress,
33 menace, or fear of immediate and unlawful bodily injury on the
34 victim or another person, shall be punished by imprisonment in
35 the state prison for 6, 8, or 10 years.

36 (D) This paragraph does not preclude prosecution under Section
37 269, Section 288.7, or any other provision of law.

38 (3) Any person who commits an act of oral copulation where
39 the act is accomplished against the victim's will by threatening to
40 retaliate in the future against the victim or any other person, and

1 there is a reasonable possibility that the perpetrator will execute
2 the threat, shall be punished by imprisonment in the state prison
3 for three, six, or eight years.

4 (d) (1) Any person who, while voluntarily acting in concert
5 with another person, either personally or by aiding and abetting
6 that other person, commits an act of oral copulation (1) when the
7 act is accomplished against the victim's will by means of force or
8 fear of immediate and unlawful bodily injury on the victim or
9 another person, or (2) where the act is accomplished against the
10 victim's will by threatening to retaliate in the future against the
11 victim or any other person, and there is a reasonable possibility
12 that the perpetrator will execute the threat, or (3) where the victim
13 is at the time incapable, because of a mental disorder or
14 developmental or physical disability, of giving legal consent, and
15 this is known or reasonably should be known to the person
16 committing the act, shall be punished by imprisonment in the state
17 prison for five, seven, or nine years. Notwithstanding the
18 appointment of a conservator with respect to the victim pursuant
19 to the provisions of the Lanterman-Petris-Short Act (Part 1
20 (commencing with Section 5000) of Division 5 of the Welfare and
21 Institutions Code), the prosecuting attorney shall prove, as an
22 element of the crime described under paragraph (3), that a mental
23 disorder or developmental or physical disability rendered the
24 alleged victim incapable of giving legal consent.

25 (2) Any person who, while voluntarily acting in concert with
26 another person, either personally or aiding and abetting that other
27 person, commits an act of oral copulation upon a victim who is
28 under 14 years of age, when the act is accomplished against the
29 victim's will by means of force or fear of immediate and unlawful
30 bodily injury on the victim or another person, shall be punished
31 by imprisonment in the state prison for 10, 12, or 14 years.

32 (3) Any person who, while voluntarily acting in concert with
33 another person, either personally or aiding and abetting that other
34 person, commits an act of oral copulation upon a victim who is a
35 minor 14 years of age or older, when the act is accomplished
36 against the victim's will by means of force or fear of immediate
37 and unlawful bodily injury on the victim or another person, shall
38 be punished by imprisonment in the state prison for 8, 10, or 12
39 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for ~~three, six, or eight~~ 9, 11, or 13 years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and

1 this is known or reasonably should be known to the person
2 committing the act, and both the defendant and the victim are at
3 the time confined in a state hospital for the care and treatment of
4 the mentally disordered or in any other public or private facility
5 for the care and treatment of the mentally disordered approved by
6 a county mental health director, shall be punished by imprisonment
7 in the state prison, ~~or in a county jail for a period of not more than~~
8 ~~one year~~ *prison for 9, 11, or 13 years.* Notwithstanding the
9 existence of a conservatorship pursuant to the provisions of the
10 Lanterman-Petris-Short Act (Part 1 (commencing with Section
11 5000) of Division 5 of the Welfare and Institutions Code), the
12 prosecuting attorney shall prove, as an element of the crime, that
13 a mental disorder or developmental or physical disability rendered
14 the alleged victim incapable of giving legal consent.

15 (i) Any person who commits an act of oral copulation, where
16 the victim is prevented from resisting by any intoxicating or
17 anesthetic substance, or any controlled substance, and this condition
18 was known, or reasonably should have been known by the accused,
19 shall be punished by imprisonment in the state prison for a period
20 of three, six, or eight years.

21 (j) Any person who commits an act of oral copulation, where
22 the victim submits under the belief that the person committing the
23 act is the victim's spouse, and this belief is induced by any artifice,
24 pretense, or concealment practiced by the accused, with intent to
25 induce the belief, shall be punished by imprisonment in the state
26 prison for a period of three, six, or eight years.

27 (k) Any person who commits an act of oral copulation, where
28 the act is accomplished against the victim's will by threatening to
29 use the authority of a public official to incarcerate, arrest, or deport
30 the victim or another, and the victim has a reasonable belief that
31 the perpetrator is a public official, shall be punished by
32 imprisonment in the state prison for a period of three, six, or eight
33 years.

34 As used in this subdivision, "public official" means a person
35 employed by a governmental agency who has the authority, as part
36 of that position, to incarcerate, arrest, or deport another. The
37 perpetrator does not actually have to be a public official.

38 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
39 means a threat to kidnap or falsely imprison, or to inflict extreme
40 pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 288.5 of the Penal Code is amended to read:

288.5. (a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.

(b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.

(c) No other act of substantial sexual conduct, as defined in subdivision (b) of Section 1203.066, with a child under 14 years of age at the time of the commission of the offenses, or lewd and lascivious acts, as defined in Section 288, involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.

(d) (1) Any person who either resides in the same home with a disabled person or has recurring access to a disabled person, who, over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with the disabled person, as defined in subdivision (b) of Section 1203.066, is guilty of the offense of continuous sexual abuse of a

1 *disabled person and shall be punished by imprisonment in the state*
2 *prison for a term of 6, 12, or 16 years.*

3 (2) *As used in this subdivision, “disabled person” means a*
4 *person who, at the time of the offense, is incapable, because of a*
5 *mental disorder or developmental or physical disability, of giving*
6 *legal consent, and this was known or reasonably should have been*
7 *known to the person committing the act.*

8 SEC. 6. *Section 289 of the Penal Code is amended to read:*

9 289. (a) (1) (A) Any person who commits an act of sexual
10 penetration when the act is accomplished against the victim’s will
11 by means of force, violence, duress, menace, or fear of immediate
12 and unlawful bodily injury on the victim or another person shall
13 be punished by imprisonment in the state prison for three, six, or
14 eight years.

15 (B) Any person who commits an act of sexual penetration upon
16 a child who is under 14 years of age, when the act is accomplished
17 against the victim’s will by means of force, violence, duress,
18 menace, or fear of immediate and unlawful bodily injury on the
19 victim or another person, shall be punished by imprisonment in
20 the state prison for 8, 10, or 12 years.

21 (C) Any person who commits an act of sexual penetration upon
22 a minor who is 14 years of age or older, when the act is
23 accomplished against the victim’s will by means of force, violence,
24 duress, menace, or fear of immediate and unlawful bodily injury
25 on the victim or another person, shall be punished by imprisonment
26 in the state prison for 6, 8, or 10 years.

27 (D) This paragraph does not preclude prosecution under Section
28 269, Section 288.7, or any other provision of law.

29 (2) Any person who commits an act of sexual penetration when
30 the act is accomplished against the victim’s will by threatening to
31 retaliate in the future against the victim or any other person, and
32 there is a reasonable possibility that the perpetrator will execute
33 the threat, shall be punished by imprisonment in the state prison
34 for three, six, or eight years.

35 (b) Except as provided in subdivision (c), any person who
36 commits an act of sexual penetration, and the victim is at the time
37 incapable, because of a mental disorder or developmental or
38 physical disability, of giving legal consent, and this is known or
39 reasonably should be known to the person committing the act or
40 causing the act to be committed, shall be punished by imprisonment

1 in the state prison for ~~three, six, or eight~~ 9, 11, or 13 years.
2 Notwithstanding the appointment of a conservator with respect to
3 the victim pursuant to the provisions of the Lanterman-Petris-Short
4 Act (Part 1 (commencing with Section 5000) of Division 5 of the
5 Welfare and Institutions Code), the prosecuting attorney shall
6 prove, as an element of the crime, that a mental disorder or
7 developmental or physical disability rendered the alleged victim
8 incapable of giving legal consent.

9 (c) Any person who commits an act of sexual penetration, and
10 the victim is at the time incapable, because of a mental disorder
11 or developmental or physical disability, of giving legal consent,
12 and this is known or reasonably should be known to the person
13 committing the act or causing the act to be committed and both
14 the defendant and the victim are at the time confined in a state
15 hospital for the care and treatment of the mentally disordered or
16 in any other public or private facility for the care and treatment of
17 the mentally disordered approved by a county mental health
18 director, shall be punished by imprisonment in the state prison, or
19 ~~in a county jail for a period of not more than one year~~ *prison for*
20 *9, 11, or 13.* Notwithstanding the existence of a conservatorship
21 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
22 1 (commencing with Section 5000) of Division 5 of the Welfare
23 and Institutions Code), the prosecuting attorney shall prove, as an
24 element of the crime, that a mental disorder or developmental or
25 physical disability rendered the alleged victim incapable of giving
26 legal consent.

27 (d) Any person who commits an act of sexual penetration, and
28 the victim is at the time unconscious of the nature of the act and
29 this is known to the person committing the act or causing the act
30 to be committed, shall be punished by imprisonment in the state
31 prison for three, six, or eight years. As used in this subdivision,
32 “unconscious of the nature of the act” means incapable of resisting
33 because the victim meets one of the following conditions:

- 34 (1) Was unconscious or asleep.
35 (2) Was not aware, knowing, perceiving, or cognizant that the
36 act occurred.
37 (3) Was not aware, knowing, perceiving, or cognizant of the
38 essential characteristics of the act due to the perpetrator’s fraud in
39 fact.

1 (4) Was not aware, knowing, perceiving, or cognizant of the
2 essential characteristics of the act due to the perpetrator's fraudulent
3 representation that the sexual penetration served a professional
4 purpose when it served no professional purpose.

5 (e) Any person who commits an act of sexual penetration when
6 the victim is prevented from resisting by any intoxicating or
7 anesthetic substance, or any controlled substance, and this condition
8 was known, or reasonably should have been known by the accused,
9 shall be punished by imprisonment in the state prison for a period
10 of three, six, or eight years.

11 (f) Any person who commits an act of sexual penetration when
12 the victim submits under the belief that the person committing the
13 act or causing the act to be committed is the victim's spouse, and
14 this belief is induced by any artifice, pretense, or concealment
15 practiced by the accused, with intent to induce the belief, shall be
16 punished by imprisonment in the state prison for a period of three,
17 six, or eight years.

18 (g) Any person who commits an act of sexual penetration when
19 the act is accomplished against the victim's will by threatening to
20 use the authority of a public official to incarcerate, arrest, or deport
21 the victim or another, and the victim has a reasonable belief that
22 the perpetrator is a public official, shall be punished by
23 imprisonment in the state prison for a period of three, six, or eight
24 years.

25 As used in this subdivision, "public official" means a person
26 employed by a governmental agency who has the authority, as part
27 of that position, to incarcerate, arrest, or deport another. The
28 perpetrator does not actually have to be a public official.

29 (h) Except as provided in Section 288, any person who
30 participates in an act of sexual penetration with another person
31 who is under 18 years of age shall be punished by imprisonment
32 in the state prison or in the county jail for a period of not more
33 than one year.

34 (i) Except as provided in Section 288, any person over the age
35 of 21 years who participates in an act of sexual penetration with
36 another person who is under 16 years of age shall be guilty of a
37 felony.

38 (j) Any person who participates in an act of sexual penetration
39 with another person who is under 14 years of age and who is more

1 than 10 years younger than he or she shall be punished by
2 imprisonment in the state prison for three, six, or eight years.

3 (k) As used in this section:

4 (1) “Sexual penetration” is the act of causing the penetration,
5 however slight, of the genital or anal opening of any person or
6 causing another person to so penetrate the defendant’s or another
7 person’s genital or anal opening for the purpose of sexual arousal,
8 gratification, or abuse by any foreign object, substance, instrument,
9 or device, or by any unknown object.

10 (2) “Foreign object, substance, instrument, or device” shall
11 include any part of the body, except a sexual organ.

12 (3) “Unknown object” shall include any foreign object,
13 substance, instrument, or device, or any part of the body, including
14 a penis, when it is not known whether penetration was by a penis
15 or by a foreign object, substance, instrument, or device, or by any
16 other part of the body.

17 (l) As used in subdivision (a), “threatening to retaliate” means
18 a threat to kidnap or falsely imprison, or inflict extreme pain,
19 serious bodily injury or death.

20 (m) As used in this section, “victim” includes any person who
21 the defendant causes to penetrate the genital or anal opening of
22 the defendant or another person or whose genital or anal opening
23 is caused to be penetrated by the defendant or another person and
24 who otherwise qualifies as a victim under the requirements of this
25 section.

26 *SEC. 7. Section 667.61 of the Penal Code is amended to read:*

27 667.61. (a) Except as provided in subdivision (j), (l), or (m),
28 any person who is convicted of an offense specified in subdivision
29 (c) under one or more of the circumstances specified in subdivision
30 (d) or under two or more of the circumstances specified in
31 subdivision (e) shall be punished by imprisonment in the state
32 prison for 25 years to life.

33 (b) Except as provided in subdivision (a), (j), (l), or (m), any
34 person who is convicted of an offense specified in subdivision (c)
35 under one of the circumstances specified in subdivision (e) shall
36 be punished by imprisonment in the state prison for 15 years to
37 life.

38 (c) This section shall apply to any of the following offenses:

39 (1) Rape, in violation of paragraph (1), (2), or (6) of subdivision
40 (a) of Section 261.

1 (2) Spousal rape, in violation of paragraph (1) or (4) of
2 subdivision (a) of Section 262.

3 (3) Rape, spousal rape, or sexual penetration, in concert, in
4 violation of Section 264.1.

5 (4) Lewd or lascivious act, in violation of subdivision (b) of
6 Section 288.

7 (5) Sexual penetration, in violation of subdivision (a), (b), *or*
8 (c) of Section 289.

9 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
10 (c), or subdivision (d), (g), *or* (h) of Section 286.

11 (7) Oral copulation, in violation of paragraph (2) or (3) of
12 subdivision (c), or subdivision (d), (g), *or* (h) of Section 288a.

13 (8) Lewd or lascivious act, in violation of subdivision (a) of
14 Section 288.

15 (9) Continuous sexual abuse of a child *or continuous sexual*
16 *abuse of a disabled person*, in violation of Section 288.5.

17 (d) The following circumstances shall apply to the offenses
18 specified in subdivision (c):

19 (1) The defendant has been previously convicted of an offense
20 specified in subdivision (c), including an offense committed in
21 another jurisdiction that includes all of the elements of an offense
22 specified in subdivision (c).

23 (2) The defendant kidnapped the victim of the present offense
24 and the movement of the victim substantially increased the risk of
25 harm to the victim over and above that level of risk necessarily
26 inherent in the underlying offense in subdivision (c).

27 (3) The defendant inflicted aggravated mayhem or torture on
28 the victim or another person in the commission of the present
29 offense in violation of Section 205 or 206.

30 (4) The defendant committed the present offense during the
31 commission of a burglary of the first degree, as defined in
32 subdivision (a) of Section 460, with intent to commit an offense
33 specified in subdivision (c).

34 (5) The defendant committed the present offense in violation
35 of Section 264.1, subdivision (d) of Section 286, or subdivision
36 (d) of Section 288a, and, in the commission of that offense, any
37 person committed any act described in paragraph (2), (3), or (4)
38 of this subdivision.

1 (6) The defendant personally inflicted great bodily injury on
2 the victim or another person in the commission of the present
3 offense in violation of Section 12022.53, 12022.7, or 12022.8.

4 (7) The defendant personally inflicted bodily harm on the victim
5 who was under 14 years of age.

6 (e) The following circumstances shall apply to the offenses
7 specified in subdivision (c):

8 (1) Except as provided in paragraph (2) of subdivision (d), the
9 defendant kidnapped the victim of the present offense in violation
10 of Section 207, 209, or 209.5.

11 (2) Except as provided in paragraph (4) of subdivision (d), the
12 defendant committed the present offense during the commission
13 of a burglary in violation of Section 459.

14 (3) The defendant personally used a dangerous or deadly weapon
15 or a firearm in the commission of the present offense in violation
16 of Section 12022, 12022.3, 12022.5, or 12022.53.

17 (4) The defendant has been convicted in the present case or
18 cases of committing an offense specified in subdivision (c) against
19 more than one victim.

20 (5) The defendant engaged in the tying or binding of the victim
21 or another person in the commission of the present offense.

22 (6) The defendant administered a controlled substance to the
23 victim in the commission of the present offense in violation of
24 Section 12022.75.

25 (7) The defendant committed the present offense in violation
26 of Section 264.1, subdivision (d) of Section 286, or subdivision
27 (d) of Section 288a, and, in the commission of that offense, any
28 person committed any act described in paragraph (1), (2), (3), (5),
29 or (6) of this subdivision or paragraph (6) of subdivision (d).

30 (f) If only the minimum number of circumstances specified in
31 subdivision (d) or (e) that are required for the punishment provided
32 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
33 proved, that circumstance or those circumstances shall be used as
34 the basis for imposing the term provided in subdivision (a), (b),
35 (j), (l), or (m) whichever is greater, rather than being used to impose
36 the punishment authorized under any other provision of law, unless
37 another provision of law provides for a greater penalty or the
38 punishment under another provision of law can be imposed in
39 addition to the punishment provided by this section. However, if
40 any additional circumstance or circumstances specified in

1 subdivision (d) or (e) have been pled and proved, the minimum
2 number of circumstances shall be used as the basis for imposing
3 the term provided in subdivision (a), (j), or (l) and any other
4 additional circumstance or circumstances shall be used to impose
5 any punishment or enhancement authorized under any other
6 provision of law.

7 (g) Notwithstanding Section 1385 or any other provision of law,
8 the court shall not strike any allegation, admission, or finding of
9 any of the circumstances specified in subdivision (d) or (e) for any
10 person who is subject to punishment under this section.

11 (h) Notwithstanding any other provision of law, probation shall
12 not be granted to, nor shall the execution or imposition of sentence
13 be suspended for, any person who is subject to punishment under
14 this section.

15 (i) For any offense specified in paragraphs (1) to (7), inclusive,
16 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
17 subdivision (n), the court shall impose a consecutive sentence for
18 each offense that results in a conviction under this section if the
19 crimes involve separate victims or involve the same victim on
20 separate occasions as defined in subdivision (d) of Section 667.6.

21 (j) (1) Any person who is convicted of an offense specified in
22 subdivision (c), with the exception of a violation of subdivision
23 (a) of Section 288, upon a victim who is a child under 14 years of
24 age under one or more of the circumstances specified in subdivision
25 (d) or under two or more of the circumstances specified in
26 subdivision (e), shall be punished by imprisonment in the state
27 prison for life without the possibility of parole. Where the person
28 was under 18 years of age at the time of the offense, the person
29 shall be punished by imprisonment in the state prison for 25 years
30 to life.

31 (2) Any person who is convicted of an offense specified in
32 subdivision (c) under one of the circumstances specified in
33 subdivision (e), upon a victim who is a child under 14 years of
34 age, shall be punished by imprisonment in the state prison for 25
35 years to life.

36 (k) As used in this section, "bodily harm" means any substantial
37 physical injury resulting from the use of force that is more than
38 the force necessary to commit an offense specified in subdivision
39 (c).

(l) Any person who is convicted of an offense specified in subdivision (n) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), upon a victim who is a minor 14 years of age or older shall be punished by imprisonment in the state prison for life without the possibility of parole. If the person who was convicted was under 18 years of age at the time of the offense, he or she shall be punished by imprisonment in the state prison for 25 years to life.

(m) Any person who is convicted of an offense specified in subdivision (n) under one of the circumstances specified in subdivision (e) against a minor 14 years of age or older shall be punished by imprisonment in the state prison for 25 years to life.

(n) Subdivisions (l) and (m) shall apply to any of the following offenses:

(1) Rape, in violation of paragraph (1) or (2) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sexual penetration, in violation of paragraph (1) of subdivision (a) or subdivision (b) or (c) of Section 289.

(5) Sodomy, in violation of paragraph (2) of subdivision (c) of Section 286, or in violation of subdivision (d), (g), or (h) of Section 286.

(6) Oral copulation, in violation of paragraph (2) of subdivision (c) of Section 288a, or in violation of subdivision (d), (g), or (h) of Section 288a.

(o) The penalties provided in this section shall apply only if the existence of any circumstance specified in subdivision (d) or (e) is alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 8. Section 2933.1 of the Penal Code is amended to read:

2933.1. (a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 or subdivision (e) of this section shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

(b) The 15-percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section.

(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).

(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative.

(e) *This section applies to the following offenses:*

(1) *Rape in violation of paragraph (1) of subdivision (a) of Section 261.*

(2) *Sodomy in violation of subdivision (g) or (h) of Section 286.*

(3) *Oral copulation in violation of subdivision (g) or (h) of Section 288a.*

(4) *Sexual penetration in violation of subdivision (b) or (c) of Section 289.*

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 129853 is added to the Health and Safety Code, to read:~~

~~129853. The person or entity requesting a copy of a plan maintained by the office shall bear the cost of producing the copy of that plan.~~

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